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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,870	02/28/2001	Xavier Forceville	569J US 3770	3493

466 7590 05/18/2004

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EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/763,870	Applicant(s) FORCEVILLE ET AL.	
	Examiner JOHN D PAK	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 0204.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,24,26,28,29,31-36,38,40 and 44-47 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35,36,38 and 40 is/are allowed.
- 6) ☒ Claim(s) 23,44 and 47 is/are rejected.
- 7) ☒ Claim(s) 26, 28-29, 31-34, 45 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 23-24, 26, 28-29, 31-36, 38, 40 and 44-47 are pending in this application.

At the outset, it is noted that the claim-recited "selenomethyl selenocysteine" is being interpreted as one single specific substance. Applicant's attorney, Mr. DuBois, agreed during a telephone conversation on 5/14/2004 that this is the correct interpretation of the claim language.

Applicant is advised that the subject matter of claim 24 related to meningitis is not specifically disclosed in the specification. Applicant must amend the specification to incorporate such subject matter into the specification. Relatedly, although peritonitis and pneumopathies are discussed in the specification examples, specific recitation of such conditions in a list of conditions to be treated would improve the specification.

Similarly, applicant is requested to verify whether treatment of rheumatoid polyarthritis (subject of original claim 4) is disclosed in the specification – if not, incorporation of such subject matter into the specification is advised.

Claims 23, 24, 26, 29, 31-34, 44 and 47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Independent claims 23 and 44 have been amended or added to recite selenocysteine-containing proteins. Selenocysteine proteins in general, and glutathione

peroxidase and selenoprotein P in particular, have not been originally disclosed as therapeutic agents to be administered for treatment of adult patients, as presently claimed. Although glutathione peroxidase and selenoprotein P are discussed as a target site of selenium¹, such substances (and selenocysteine containing proteins in general) were not originally disclosed as active agents to be administered to adult patients, as presently claimed. Therefore, said independent claims 23 and 44, and claims dependent thereon that do not explicitly cure the above-discussed deficiency, lack adequate written descriptive support to the extent that "selenocysteine-containing protein," "glutathione peroxidase" and "selenoprotein P" are being claimed as the therapeutic agent to be administered to an adult patient, as claimed.

Claims 35-36, 38 and 40 are allowed.

Claims 28, 45 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

¹ See the last four lines of specification page 7.

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**, **effective February 3, 2004**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Thurman Page, can be reached on (571)272-0602, effective February 3, 2004.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

A handwritten signature in black ink, appearing to read 'JPak', is positioned above the printed name.

**JOHN PAK
PRIMARY EXAMINER
GROUP 1000**